



Minutes

December 13, 2016

State Courts Building ♦ 1501 West Washington St. ♦ Conference Room 101
Phoenix, Arizona

Present: Dave Byers, Chair, Tom O'Connell, Vice Chair, Kent Batty, Judge Michael Bluff, Nancy Grey-Eade (proxy for Judge Maria Elena Cruz), India Davis, Jeffrey Fine, Kirstin Flores, Ryan Glover, Bob James, Paul Julien, Doug Kooi, Jeremy Mussman, Tony Penn, Dianne Post, Judge Antonio Riojas, Judge Thomas Robinson, Leonard Ruiz, MaryEllen Sheppard, Alessandra Soler, Kathy Waters

Absent: Judge John Hudson, Officer Michael Kurtenbach, Judge Dorothy Little, Rebecca Steele, Judge Lisa Roberts, Judge Don Taylor

Presenters/Guests: Candace Atkinson, Jennifer Greene, Dorothy Givens, Donald Jacobson, Megan Kintner, Jerry Landau, Heather Murphy, David Nicholas, Marcus Reinkensmeyer, Judge Ron Reinstein, Gary Reitano (U.S. Attorney's Office), David Withey

Staff: Theresa Barrett, Kathy Sekardi, Susan Pickard, Sabrina Nash, Patrick Scott, Administrative Office of the Courts (AOC)

CALL TO ORDER - Dave Byers called the meeting of the Task Force on Fair Justice for All to order at 10:02 a.m. without a quorum.

WELCOME AND OPENING REMARKS – Everyone present made self-introductions, including the newest appointee, Kirstin Flores, Executive Director, Office of Victim Services, Arizona Attorney General's Office. During the introductions a quorum of the membership was reached. Mr. Byers announced that Chief Justice Bales had extended the task force to August 31, 2017.

The *Report and Recommendations of the Task Force on Fair Justice for All* was, or will be, presented to the following organizations:

- Humanist Society of Greater Phoenix
- State Bar of Arizona
 - Military Legal Affairs Committee
 - Board of Governors
- Governor's Office of Highway Safety
- Inn of Courts
- Sandra Day O'Connor Law School
- Conference of State Court Administrators
- Arizona Attorneys for Criminal Justice
- Pending presentations include:
 - Mohave County Strategic Planning Session, January
 - Inn of Courts in the Valley, February
 - Problem-Solving Court Conference, April
 - Arizona Courts Association, April
 - State Bar Conference, June

Presenters continue to report positive feedback, and evidence of modest culture change.

Mr. Byers shared news from around the country, which included:

- New Mexico passed a Constitutional amendment that allows judges to deny bail to defendants considered exceptionally dangerous.
- American Legislative Exchange Council (ALEC) resolution on criminal justice fines and fees was adopted on September 12, 2016. This Resolution supports ensuring that fines and fees imposed by the criminal justice system are reasonable, transparent, and proportionate, and not in conflict with the goals of improving public safety, reducing recidivism, ensuring victims receive restitution, and enabling offenders and ex-offenders to meet obligations to their families, especially children.
- The National Task Force on Fines, Fees and Bail Practices has released the *Lawful Collection of Legal Financial Obligations, A Bench Card for Judges* intended to assist judges in ability-to-pay determinations.

APPROVAL OF MINUTES FROM NOVEMBER 3, 2016

MOTION: To approve the November 3, 2016, minutes as presented. Motion seconded.

VOTE: Passed unanimously.

UPDATE ON LEGISLATIVE PACKET MODIFICATIONS – (This agenda item was taken out of order.) Jerry Landau provided the members with updated fact sheets for the following legislative proposals noting the changes to each:

- **2017-01: Sentencing; fines; fees; probation** – clarifies that assessments, fees, and forfeitures can be mitigated the same as fines.
- **2017-02: Driving; violations; restricted license; penalties** – 1) removes provisions permitting the court to restrict a driver license as a result of a conviction of a major traffic violation, 2) permits the court to order a restriction of a driver license if a person fails to pay a civil or traffic violation, 3) the Arizona Department of Transportation (ADOT) has agreed to the January 1, 2018, effective date. Logistics are still being worked out with Motor Vehicle Department.
- **2017-03: Bailable offenses; hearing; schedule** – the language requiring that the *Simpson* hearing be held within 24 hours and some of the court procedural language has been removed from the statute and will be addressed by court rule; and cleans up some language in the mandatory bond card.
- **2017-04: Competency examination; jurisdiction** – No changes reported.

UPDATE ON RECOMMENDATIONS IN PROGRESS – Mr. Byers and Don Jacobson provided an update on the progress of recommendation implementation:

- The Legislative Summit is scheduled for January 10, 2016 from 11:00 a.m. to 1:30 p.m. This meeting is expected to garner legislative support and build momentum of the task force's recommendations. Ninety legislators and their staff, key staff from the Governor's Office, one representative from each county board of supervisors, and representatives from the League of Towns and Cities have been invited. In addition, members of the press will be present. RSVP's from the task force members was requested by December 30.
- Arizona Judicial Automated Case System (AJACS) Online Payment – Pending successful pilots in Apache Junction Municipal Court and a justice court, courts using the AJACS case management system will be receiving an integrated online payment system.
- Proof of Compliance – Acknowledging that the City of Tucson already has a program in place, Mr. Byers announced that the City of Phoenix will be viewing a demonstration of the Matterhorn online case resolution platform soon. (See MJ Cartwright's presentation later in the minutes.) Additional programs available from an e-filing vendor, Xerox, and a company that developed online check deposit for a California credit union are being reviewed.

- Presiding Judge Mental Health Stakeholder Meetings – Pima County will be hosting a summit for all presiding judges in May regarding how to reduce criminal justice system involvement with those who have mental health issues.
- Income Verification – Work to identify accurate income verification software continues. Discussions have begun with Harvard to find additional data avenues.
- Yuma Fine Reduction Pilot Program – Scheduled to rollout in January with up to 50% reductions on civil traffic, reinstatement of driver license, and payment plans.
- Arizona Traffic Ticket and Complaint (ATTC) – The ATTC will be updated to include fields for cell or alternate telephone numbers as well as information about not ignoring financial responsibility and the availability of payment plans.
- Expanded Use of the Public Safety Assessment – Opening discussions with the Arnold Foundation and IBM regarding the use of Watson Analytics’ predictive forecasting to make the assessment more resource-effective and financially affordable.
- Education – The AOC, Education Services Division (ESD) is planning the June 2017 Judicial Conference, as well as developing special training for judges pro tem and part-time judges who conduct Initial Appearance Hearings. ESD staff are discovering that the educational aspect of this project goes way beyond the educational recommendations to include almost all of the task force recommendations.

OTHER PROGRESS OF NOTE:

- Starting January 3rd, Tucson City Court will be implementing their version of Phoenix CAP program. All fines and fees owed on criminal, civil, and parking will be consolidated, and with 10% or \$500, whichever is less, down payment, the defendant’s driver license will be reinstated and a payment plan established based upon on much the defendant can afford to pay monthly.
- Maricopa County Justice Courts’ (MCJC) video appearance program has reduced pre-trial confinement time by 53%. Another 30% reduction is anticipated when MCJC moves to the Intake and Release Facility (ITR). Weekend appearance hearings are also being considered.

UPDATE ON RULE CHANGE PETITION (R-16-0041) – A number of comments were received from several stakeholders. Modifications were made to the petition based upon some of the comments. The amended petition was filed. The Supreme Court met on December 12 and adopted all of the recommended changes as modified.

PRESENTATION OF ONLINE CASE RESOLUTION SOFTWARE – MJ Cartwright demonstrated Matterhorn, a mobile online platform developed by Court Innovations with the University of Michigan to help reduce congested courtrooms and address those for whom appearing at court is a near impossibility (37% of Michigan cases). Matterhorn can provide efficiencies for not only courts, judges, and court staff, but also law enforcement, lawyers and the general public. It provides a vehicle for resolving traffic tickets, parking tickets, warrants, license suspension, small claims and family law matters.

NOTE: Kirsten Flores announced that she would be abstaining from the following rule-related votes.

REPORT FROM ARS § 13-810/OSC SUB-WORKGROUP – Jennifer Greene, AOC Counsel, presented the amendments to Criminal Rules 26.12, 27.8, and 27.9 that resulted from the sub-workgroup’s meeting on November 23, 2016.

Rule 26.12 – The Purge Review Hearing process from probation violation and order to show cause to possible civil contempt and incarceration.

Motion: To submit the amendments to Criminal Rules 26.12 as presented. Motion was seconded.

Discussion: The *Bearden* language as it appeared in the green handout regarding Criminal Rule 26.12(c)(5) needs to be added to ensue due process.

Motion: To amend motion to add *Bearden* language. Motion was seconded.

Vote: Passed 20-0-1

Amended Motion: To submit the amendments to Criminal Rules 26.12 including the *Bearden* language. Motion was seconded.

Vote: Passed 20-0-1

Rule 27.8 and 27.9

Motion: To approve the amendments in concept limiting the protections to the case in question. Motion was seconded.

Vote: Passed 20-0-1

REPORT FROM RULES 4.2 AND 7.2 SUB-WORKGROUP – David Withey, AOC Chief Counsel, reviewed Maricopa County data regarding charges and set bond amounts for calendar year 2016, then presented the amendments to Criminal Rules 4.2 and 7.2 that resulted from the sub-workgroup’s meeting on November 23, 2016. Jeremy Mussman expressed the concerns of criminal defense attorneys regarding limiting entry and procedural protections.

Motion: While moving forward with the legislation, to file the rule change petition with the best possible versions of the rules in January. Motion was seconded.

Vote: Passed 16-3-1

Members of this workgroup will be notified of the next meeting possibly occurring during the first week of January 2017.

CHIEF JUSTICE BALES – Midway through the discussion above, Chief Justice Bales dropped in to express his sincere gratitude to the members for the remarkable accomplishments of the task force toward the Court’s top priority, fair justice.

CALL TO THE PUBLIC – Officer David Nichols, Buckeye Police Department, on behalf of Chief of Police Larry Hall, spoke.

Meeting adjourned at 1:45 p.m.

NEXT MEETING – To be determined.